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February 25, 1999

Magalie Roman Salas
Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

VIA MESSENGER

RE: *Ex Parte Communication in CC Docket 98-147*

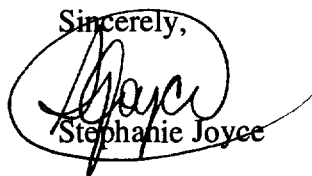
Dear Ms. Salas:

On Wednesday, February 24, 1999 Christy Kunin and the undersigned, counsel to Rhythms NetConnections, Inc. and MachOne Communications, Ruth Milkman and Michael Olsen, counsel for NorthPoint Communications, and Thomas Koutsky, counsel for Covad Communications met with Carol Matthey, Jonathan Askin and Michael Pryor of the Common Carrier Bureau. The attached materials were distributed and summarized.

Pursuant to Section 1.1206 of the Commission's Rules, the original and one copy of this letter are enclosed for filing.

Please contact me should you have any questions.

Sincerely,


Stephanie Joyce

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FCC MEETING TALKING POINTS
Covad Communications, MachOne Communications, NorthPoint Communications & Rhythms NetConnections
Carol Matthey, CCB
Wednesday, February 24, 1999, 2 p.m.

I. Today, Data Services is the only market where real competition is taking hold

- A. FCC action now will ensure continued rapid deployment of the only demonstrable success of the Telecommunications Act of 1996.
 - 1. Continued vibrant data competition depends on assuring the financial and consumer markets that the FCC will safeguard the competitive requirements of the 1996 Act.
 - 2. Only definitive, formal FCC action will counteract the negative messages widely circulated by ILECs prognosticating the end of essential UNEs.
- B. The ILEC "Letter Commitments" are a start, but are not sufficient, as evidenced by the expressed recalcitrance of ILECs despite these nonbinding commitments to the Chairman.
- C. To preserve this one area of true competition, the FCC must Act now, because waiting until the Summer (*i.e.* dealing first with voice service UNEs) threatens data competition.

II. Immediate release of the 706 Order is essential to ensure continued rapid deployment of advanced data services

- A. Nothing in *Iowa Utilities* precludes this Commission action.
- B. *Iowa Utilities* was a validation of the FCC's jurisdiction and broad discretion to promulgate rules under the Communications Act.
- C. Non-UNE related 706 issues in the "held" 706 order — including collocation and remote terminals — are not implicated by *Iowa Utilities* and accordingly should be issued immediately.
- D. On the record developed for the *Advanced Wireline Services Proceeding* and the *First Report & Order*, it is clear that under virtually any standard that would comport with *Iowa Utilities*, loops will be considered UNEs; thus the FCC should also issue the loop-related portions of 706 order, including line sharing. (See *First Report & Order* ¶ 368 (referencing ILEC comments that loops should be UNEs), ¶¶ 377-378. In addition, Congress recognized loops as necessary by specifying them in the competitive checklist and requiring they be provided to obtain relief under section 271. 47 U.S.C § 271(c)(2)(B)(iv).

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UNE Standards and Rules After *Iowa Utilities*

Meeting with Chris Wright, OGC
Monday, February 22, 1999, 2:00 p.m.



**Covad Communications, MachOne Communications,
NorthPoint Communications, Rhythms NetConnections**

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Today, Only the Advanced Data Services Market Is Developing Substantial Competition

- FCC action will ensure continued rapid deployment of the only demonstrable success of the 1996 Act.
- Financial and consumer markets must be assured that the FCC will safeguard competition.
- Only immediate, definitive and formal FCC action will counteract the ILECs' expressed recalcitrance.
- The ILEC "Letter Commitments" are a start, but these non-binding commitments are not sufficient to provide certainty to the marketplace.

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FCC Must Take Four Decisive Actions to Preserve Data Services Competition

- *Release 706 Order:* Immediately issue the 706 Advanced Services Order, including provisions on collocation, remote terminals, loops and line sharing.
- *Issue Order:* Immediately issue an order declaring that ILECs cannot “Just Say No” under the 1996 Act.
- *Promulgate Interim Rules:* At the March Open Meeting, set Interim Rules preserving the UNE *status quo* under a more than “*de minimis*” standard.
- *Release Expedited UNE NPRM:* Release an NPRM for UNE requirements on an expedited notice and comment basis.

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Immediate Release of the 706 Order Will Promote Competitive Data Services Markets

- Nothing in *Iowa Utilities* precludes Commission action in Advanced Services rulemaking.
- *Iowa Utilities* strongly validates the FCC's jurisdiction and broad rulemaking discretion under the 1996 Act.
- Non-UNE related issues in the 706 order — including collocation and remote terminals — are not affected.
- Under *Iowa Utilities*, loops meet virtually *any* standard for UNEs — the FCC should issue the loop-related portions of 706 Order, including line sharing.

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Despite Commitment, ILECs “Just Say No”

- GTE first refused to sign new contracts or even talk with CLECs about UNEs, forcing CLECs to arbitrate.
- GTE will only sign agreements if CLECs agree to waive combinations and if it retains the ability to decide which FCC ordered UNEs it will provide.
- Bell Atlantic publicly contends, as widely reported, that after *Iowa Utilities* it no longer has any legal obligation to provide loops.

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The FCC Must Decisively Order that ILECs Cannot “Just Say No” In UNE Provisioning

- In order to forestall ILECs from refusing to deal with DSL competitors, the FCC must affirmatively hold that an ILEC's blanket refusal to provide UNEs violates the Act.
- The FCC must also reaffirm its commitment to enforce all its rules, including all existing UNE pricing rules.

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Policy Reasons to Establish Interim Rules for UNEs

- To preserve *status quo* and prevent the competitively destructive absence of law that could cause a substantial disruption in telecommunications markets.
- To reassure financial and consumer markets of the continued viability of data and advanced services competition.

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Legal Bases for Establishing Interim UNE Rules

- To avoid substantial disruption in the operation of telecommunications markets, the FCC has “good cause” under the APA to enact interim rules without notice-and-comment.
- FCC plainly has procedural authority to promulgate interim rules under a revised legal standard that will be subject to full record development in an expedited companion NPRM.

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Interim UNE Standard

- An ILEC must provide a UNE if failure to provision that element would have more than a “de minimis impact” on a competitor.
- The FCC-identified UNEs meet this revised legal standard and must be provided in the interim.
- Based on the extensive record developed in the *First Report & Order*, denial of UNEs would have more than a *de minimis impact* on competitors’ ability to do business.

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The FCC Must Expedite the UNE NPRM

- An expedited proceeding is appropriate in light of the extensive record already developed on UNEs.
- The telecommunications markets require final and swift resolution of the unbundling requirements.
- Rapid resolution of the unbundling issues will minimize any backlash from an interim rules Order.

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February 18, 1999

Lynn Shapiro Starr
Vice President
Regulatory Affairs

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**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY**

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: **Ex Parte Statement**
CC Docket 96-98

Dear Ms. Salas:

On February 8, 1999, John Lenahan, Associate General Counsel and I met with Larry Strickling, Don Stockdale, Carol Matthey, Jane Jackson and Michael Pryor of the Common Carrier Bureau to discuss the Supreme Court's Decision in AT&T Corporation, et al. v. Iowa Utilities Board. The specific content of our discussion is reflected in the attached document entitled, Section 251(d)(2) - FCC Remand Considerations, CC Docket No. 96-98.

Should any questions arise in connection with this matter, please contact me. Two copies of this letter are being submitted pursuant to the Commission's rules.

Sincerely,



Attachment

cc: L. Strickling
D. Stockdale
C. Matthey
J. Jackson
M. Pryor

- ❖ Moreover – even apart from the proprietary components of switching – the fact that hundreds of switches have been deployed by new entrants demonstrates that there are reasonably available alternate sources for switching. Thus, the local switch does not meet the “impair” standard.
- ❖ Likewise, many carriers have established their own operator and directory assistance service centers. The large interexchange carriers, for example, have established their own nationwide services and are competing against incumbents’ operator and directory assistance services.
- ❖ In contrast, even though there are numerous alternatives to the incumbent’s loop, such as CLEC fiber, fixed wireless, PCS and cable telephony, local loops may be required in certain areas. For example, in a market of low line density without a cable system, it is possible that the failure to make the incumbent’s loops available would “impair” local competition.

VII. Factual Inquiries Required to Properly Apply the Section 251(d)(2) Standard to Each Network Element

- ◆ In addition to articulating a reasonable standard consistent with the statutory purpose and language, the Commission must also undertake a factual inquiry to determine whether alternative sources are available on reasonable and economic terms.
- ◆ Such a factual analysis is clearly required by the majority’s opinion, but the data required to conduct such analysis is not currently in the possession of the Commission. See Industry Analysis Division, Common Carrier Bureau, Report – Local Competition at 3., issued Dec. 1998. (The Commission “does not yet possess the detailed information necessary to evaluate the current state of local telephone competition on a market-by-market basis”).
- ◆ The Commission should take immediate steps to gather the information that it currently lacks regarding alternative competitive sources. At a minimum, the Commission should obtain the following information for each network element, on an appropriate market-specific basis:

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February 18, 1999